



HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<u>Criminal Appeal No.964/2002</u>	
	<u>APPELLANT</u>	Dauram S/o Moturam aged about 43 years R/o Village Sarkho, P/S Janjgir, District Janjgir-Champa
		<u>Versus</u>
	<u>RESPONDENT</u>	State of Chhattisgarh, Through Police Station - Janjgir, District Janjgir-Champa
	<u>CRIMINAL APPEAL u/s 374(2) OF THE CODE OF CRIMINAL PROCEDURE</u>	
	<u>D.B.: HON'BLE SHRI L.C. BHADOO, J. & HON'BLE SHRI SUNIL KUMAR SINHA, J.</u>	
	<u>ORAL JUDGMENT</u> (06.09.2007)	
	<u>L.C. Bhadoo, J:-</u>	
	Shri P.K. Tuslyan, counsel for the appellant.	
	Shri D.K. Gwalre, Government Advocate for the State.	
	Heard.	
	1. This appeal is directed against the judgment of conviction and order of sentence dated 9.7.2002 passed by the Second Additional Sessions Judge (FTC), Janjgir	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	in Sessions Trial No.359/2000, whereby, the learned Second Additional Sessions Judge after holding the accused/appellant guilty for the offence punishable under Section 302 of I.P.C., for committing murder of his wife namely Bimla Bai, sentenced him to undergo imprisonment for life. 2. Case of the prosecution in brief is that on 01.08.2000, Chandrika (PW-3), son of the accused/appellant, had gone towards the pond to answer the call of nature at about 10:00 am, leaving behind his father- Dauram (accused), stepmother - Bimla Bai, younger sister - Deshkumar and younger brother -Lekhram in his house. When he was returning from the pond side, Sidheshwar and Terasram Suryavanshi met him and informed that his father - Dauram is attacking his mother - Bimla Bai with an axe. He rushed towards his house and saw that his mother was lying on the ground in the courtyard of the house, there was an injury on the shoulder of the left hand near the neck inflicted by the axe, blood was lying on the ground, and his mother was dead. His father was not there in the house. Axe, weapon of offence, stained with blood was lying in a pit near the courtyard. In the meantime, his grandmother returned from the pond. The crime was witnessed by Yogesh (PW-2). Thereafter,	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	Chandrika alongwith Gokulal, Kotwar, went to the Police Station, Janjgir and lodged the report. After registering the case under Ex.-P/3, the Investigating Officer left for the scene of occurrence, plain soil and blood stained soil were taken into possession under Ex.-P/1. Axe, weapon of offence, was seized under Ex.P/2 from the place of occurrence. Site plan (Ex-P/5) was prepared by Halka Patwari, body of Bimla Bai was sent for postmortem examination to the Government Hospital, Jangjir under Ex.-P/6, where Dr. S .N. Jangde conducted postmortem and opined that the caused of death was haemorrhage, shock and coma, as a result of excessive loss of blood from cut carotid artery and jugular veins. He prepared postmortem report (Ex-P/7). Axe, weapon of offence, was sent to the Assistant Surgeon under Ex.P/8 A for his opinion, he gave opinion under Ex.-P/8. Inquest (Ex.-P/9) on the body of the deceased -Bimla Bai was prepared by the investigating officer. 3. After completion of the investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Janjgir, who in turn committed the case to the Sessions Judge, Bilaspur, from where, the learned Second Additional Sessions Judge (FTC), Janjgir received the case on transfer for trial.	

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आदेश पत्रक (पूर्वानुबद्ध)

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	4. The prosecution in order to establish charge against accused/appellant examined 14 witnesses. The statement of the accused/appellant was recorded under Section 313 of the Code of Criminal Procedure, in which, he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime in question. 5. The learned Second Additional Sessions Judge, after hearing the arguments of learned counsel for the respective parties, convicted and sentenced the accused/appellant as aforementioned. 6 We have heard Shri P.K. Tulsyan, learned counsel for the appellant and D.K. Gwalre, Govt. Advocate, for the State. 7 Learned counsel for the appellant has not disputed the homicidal death of Bimla Bai. Moreover, from the ocular evidence of eye-witnesses - Yogesh (PW-2), Terasram Suryavanshi (PW-4), Sidheshwar (PW-11), who all have stated that the accused attacked Bimla Bai with the axe, as also from the medical evidence of Dr. S.N. Jangde (PW-5), who has stated that on 2/8/2000, he conducted postmortem on the body of Vimla Bai and noticed that there were two incised wounds, one abrasion on the left cheek, muscles, cervical vertebrae 5th, 6th, vessels carotid artery and jugular veins were cut, cause of death was	

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आदेश पत्रक (पूर्वानुबद्ध)

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	5	excessive haemorrhage on account of injuries ^{by} to the carotid artery and jugular veins, it is established that the death of Vimla Bai was homicidal in nature. 8 As far as complicity of the accused/appellant in crime in question is concerned, PW-2-Yogesh, a boy aged about 12 years, who is the neighbour of accused/appellant, has stated that on the fateful day, he was playing at a place between his house and accused house. He saw Dauram (accused/appellant) beating his wife - Bimla Bai. When Bimla Bai tried to go out from the house saying that she will not reside with him, accused said that how she will go and dragged her back in the house holding her hairs. He saw that the accused picked up an axe and attacked Bimla Bai on her neck. Bimla Bai was praying to the accused with folded hands to not to attack her, she was crying for help. Thereafter, he rushed towards the pond, informed Sidheshwar and Terasram about the incident; they came to the place of occurrence and saw the accused/appellant attacking Bimla Bai with the axe. Terasram snatched the axe from the accused/appellant, threw the same, Bimla Bai was writhing in pain. The above evidence of this witness - Yogesh is corroborated by the evidence of Terasram Suryavanshi (PW-4) and Sidheshwar (PW-11), who also

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आदेश पत्रक (पूर्वानुबद्ध)

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	6	saw the accused/appellant attacking the deceased with the axe. These two witnesses have stated that they have informed about the incident to Chandrika (son of the deceased), who had gone to answer the call of nature towards the pond. When Chandrika returned back to his house, he saw his mother lying in a pool of blood. Thereafter, he went to the Police Station and lodged the report. 9 All the three witnesses namely - Yogesh (PW-2), Terasram Suryavanshi (PW-4), Sidheshwar (PW-11) are independent witnesses. In their cross-examination, defence has not been able to elicit any circumstance, which discredits the evidence of these witnesses. There is nothing in the cross-examination of these witnesses to show that these witnesses have implicated the accused on account of any animosity or bias against him. In fact, Yogesh (PW-2) resides in the neighbourhood of the accused and there was no occasion for him to implicate the accused in a false case, in a heinous crime of murder of his own wife. Even son of the accused/appellant - Chandrika (PW-3) has stated that he was informed about the incident by Sidheshwar and Terasram, near the pond. Thereafter, he immediately rushed to his house and saw his mother lying dead in the house. There was

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आदेश पत्रक (पूर्वानुबद्ध)

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	blood on the ground, axe was lying in a pit near the courtyard and accused was not there in the house. Therefore, in view of the above evidence, it is established that the accused attacked the deceased with the axe. 10 Learned counsel for the appellant submitted that from the evidence on record, it appears that the accused/appellant attacked the deceased in a sudden quarrel, in a heat of passion, without pre-meditation and preparation, therefore, the evidence against the accused/appellant does not travel beyond Section 304 Part-II of IPC. He further submitted that there is nothing on record to establish the intention of the accused/appellant to cause the death of Bimla Bai. 11 It is an admitted position that the accused attacked the deceased with the axe on the neck, as a result of which carotid artery and jugular veins were cut and Bimla Bai died spontaneously. 12 PW-2 - Yogesh has categorically stated that he resides in the neighbourhood of the accused/appellant, he saw the accused/appellant beating the deceased and when she tried to go out of the house, accused dragged her back in the house by holding her hairs. Thereafter, he picked up the axe, attacked her, inspite of the fact that she was repeatedly praying to the accused with folded hands to	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	not to attack her. The accused/appellant attacked the deceased mercilessly with the deadly weapon i.e. axe and caused multiple injuries on the vital parts of the body, therefore, intention of the accused to cause death of Bimla Bai was writ large. For this view, we are fortified by the judgment of the Apex Court in the matter of <u>Thangaiya vs. State of Tamil Nadu 2005, Cri.L.J., 684.</u> 13 In the facts and circumstances of this case, we do not find any substance in the arguments advanced by learned counsel for the appellant. 14 The appeal being devoid of merits, is liable to be dismissed and is accordingly dismissed. Sd/- L.C.BHADOO Judge	Sd/- Sunil Kumar Sinha Judge

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